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By Email

James E. Woolford
Director
Office of Superfund Remediation and Technology Innovation
Office of Solid Waste and Emergency Response
USEPA, Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Room S5622 Mail Code: 5201P
Washington, DC 20460

Re: Lower Passaic River Focused Feasibility Study

Dear Mr. Woolford:

On behalf of our clients, Occidental Chemical Corporation, Maxus Energy Corporation, and Tierra Solutions, Inc., we thank you for the opportunity to meet on Tuesday. We appreciated, as well, Region 2 representatives joining by telephone. As we discussed, please find attached a narrative explanation of some of the policy issues we raised and discussed on Tuesday, as well as the PowerPoint we presented at our meeting.

Mr. Ells, as we departed our meeting, observed that an evaluation of fish tissue would have been helpful in considering MNA. Please find attached a summary prepared by Arcadis of two fish tissue sampling programs approximately ten years apart, along with Maxus' proposal to conduct additional fish tissue sampling. Also, within the next few weeks our clients will submit to EPA a conceptual bioremediation approach to sediment remediation.

Finally, our clients would like to take a step back from specific concerns on the FFS and ask that EPA Headquarters consider the broader public interest, which we believe it is able to consider better than any of the other parties, including us, who are more closely attached to the Site.

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In our view, the process for decisionmaking on the Passaic River fails to follow protocol and is operating on the edge of if not outside the bounds of the clear, delineated, traditional, legally-defensible Superfund process. The FFS is not a process of statute or regulation, only guidance, and even in guidance, such a process was only intended for much smaller, less technically and legally complex sites. And the RI/FS for the same stretch of river, and importantly, upstream portions that should likely be cleaned up ahead of downstream stretches to avoid recontamination, is likely to be completed shortly after the release of the FFS, confusing matters and likely causing further complication and contradiction. We fear that the RI/FS itself is biased in that it is being led by a subset of PRPs attempting to avoid or drastically minimize their own liability by developing a technical document that focuses only on dioxin and not on the other key COCs in the River, including PCBs, mercury, and PAHs. Hundreds of millions of dollars have been spent on studies, litigation, and public relations, while relatively little has been spent on actual remediation, other than the work Maxus funded on the OU1 site itself and the first phase of sediment removal.

Our clients respectfully ask that EPA Headquarters work with all parties, including us, to determine in a time-limited, focused way, if the entire process of decisionmaking could not be re-engineered to lead, in the long run, to better, faster, more widely-supportable, defensible remedial decisions. We believe that if all parties stay with the current course, the PRPs will have little alternative but to challenge the remedy in every way possible. Our clients would much prefer to expend their resources in actual remediation. To date, unfortunately for the public and the citizens of New Jersey and the residents along the River, too much money has been spent on transaction costs rather than environmental remediation and restoration.

Our clients propose that EPA Headquarters create no more than a three-month "time out" to review the entire process for remedial decisionmaking on the Passaic River. We understand that EPA and other parties at other sites have developed collaborative, mission-driving, efficient processes to improve collaboration, reduce conflict, increase efficiency, and speed remedial decisionmaking. While they recognize that this mega site is particularly complex in every way, our clients believe it in the public interest to take a bounded "time

out” to seek a better way forward. It is our understanding that EPA has access to the best mediators and process experts in the country when it comes to Superfund cleanup through a blanket five-year contract under EPA’s Conflict Prevention and Resolution Center. We are aware that EPA has successfully used alternative dispute resolution to improve decisionmaking at many sites across the country. We propose that the RPs fund, via EPA through this contract, to immediately retain two or three of the best Superfund mediators in the country to conduct a conflict and process assessment.

Through this time-limited, intensive intervention, the conflict resolution professionals could assist all of us in:

- 1) interviewing confidentially the parties’ principals and in-house counsel only (EPA Headquarters, EPA Region 2, New Jersey DEP, New Jersey Governor’s Office, City of Newark, Occidental/Maxus/Tierra Solutions, and key members of the Cooperating Parties Group (CPG);
- 2) exploring with these entities ideas for re-engineering the current set of relationships, processes, organizations, and interactions to increase information, decrease or mitigate conflict, separate more clearly remedial decisionmaking from contentious allocation decisions, minimize redundancies and concurrent processes, leverage joint resources, and speed decisions to remedial action;
- 3) sharing the results with all parties, in draft, in writing, with process recommendations and options; and
- 4) convening at least one well-organized, well-structured, mediated “no commitments” workshop among these entities to explore and consider these recommendations.

Our clients do not want to be the entities with key interests left outside the key decisions affecting the cleanup of this site and be forced to expend their resources almost solely on defense, litigation, alliance building, lobbying and self-protection. Rather, they would much prefer to be part of a re-imagined process that can much better serve the public interest.

We are available to answer follow-up questions, if there are any. Thank you again for your courtesy, time, and consideration.

Yours very truly,

A handwritten signature in black ink, appearing to read "Carol Dinkins". The signature is fluid and cursive, with a long horizontal stroke at the end.

Carol E. Dinkins

Attachment

cc: Steve Ells
Walter Mugdan
Eric Schaaf